

Rules of Procedure and Evidence

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Part I - GENERAL PROVISIONS

Rule 1: Entry into Force

These Rules of Procedure and Evidence as first amended on 7 March 2003, are applicable pursuant to Article 14 of the Statute of the Special Court for Sierra Leone, and entered into force on 12 April 2002.

Rule 2: Definitions

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

Accused: A person against whom one or more counts in an indictment have been approved in accordance with Rule 47;

Agreement: The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002;

Arrest: The act of apprehending and taking a suspect or an accused into custody;

Council of Judges: the Council of Judges as referred to in Rule 23;

Defence Office: The Office established by the Registrar for the purpose of ensuring the rights of suspects and accused in accordance with the Statute and Rules of Procedure and Evidence;

The Deputy Prosecutor: The Deputy Prosecutor appointed pursuant to Article 3 of the Agreement;

Designated Judge: a Judge designated for a certain period of time pursuant to Rule 28;

Detention Facility: the Detention Facility of the Special Court shall include all premises where suspects or accused are detained in accordance with these Rules and with the Rules of Detention;

Investigation: All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence, whether before or after approval of an indictment;

Management Committee: the Committee established pursuant to Article 7 of the Agreement;

Party: The Prosecutor or the accused;

Principal Defender: The Principal Defender as appointed by the Registrar;

Pre-Hearing Judge: A Judge of the Appeals Chamber responsible for the pre-hearing proceedings of an appeal as designated pursuant to Rule 109;

President: The arse of the Special Court as referred to in Article 12 of the Statute;

Prosecutor: The Prosecutor appointed pursuant to Article 3 of the Agreement;

Public Holiday: A Public Holiday shall be an official public holiday of the Republic of Sierra Leone or of the United Nations;

Regulations: The provisions framed by the Prosecutor pursuant to Rule 37 (A) for the purpose of directing the functions of the Office of the Prosecutor;

Rules: The Rules referred to in Rule 1;

Rules of Detention: Rules Governing the Detention of Persons Awaiting Trial or Appeal or otherwise Detained by the Special Court;

Special Court: The Special Court for Sierra Leone established by the Agreement between the United Nations and the Government of Sierra Leone of 16 January 2002 and consisting of the following organs: the Chambers, the Prosecutor and the Registry;

Statute: The Statute of the Special Court annexed to the Agreement;

Suspect: A person concerning whom the Prosecutor possesses reliable information which tends to show that he may have committed a crime over which the Special Court has jurisdiction in accordance with Article 1 of the Statute;

Transaction: A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

Victim: A person against whom a crime over which the Special Court has jurisdiction has allegedly or has been found to have been committed.

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

Rule 3: Working Language

(A) The working language of the Special Court shall be English.

(B) The accused or suspect shall have the right to use his own language.

(C) Any person appearing before or giving evidence to the Special Court, who does not have sufficient knowledge of English, may ask for permission to use his own language.

(D) The Registrar shall make any necessary arrangements for interpretation and translation.

Rule 4: Sittings away from the Seat of the Special Court

A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In so doing, audio or video-link technology, email or other available electronic instruments may be used if authorised by the President or Presiding Judge.

Rule 5: Non-compliance with the Rules

Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber or the Designated Judge may grant relief.

Rule 6: Amendment of the Rules

(A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor, the Registrar, the Defence Office and by the Sierra Leone Bar Association or any other entity invited by the President to make proposals for amendments.

(B) Proposals for amendment may be adopted at a Plenary Meeting of the Special Court.

(C) An amendment of the Rules may be adopted otherwise than as stipulated in Sub-Rule (B) above, provided it is approved unanimously by any appropriate means either done in writing or confirmed in writing.

(D) An amendment shall, unless otherwise indicated, enter into force immediately. The Registrar shall publish the amendment by appropriate means.

Rule 7: Time limits

(A) Unless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused or the Prosecutor as the case may be.

(B) Where a time limit is expressed in days, only ordinary calendar days shall be counted. Weekdays, Saturdays, Sundays and Public Holiday shall be counted as days. However, should the time limit expire on a Saturday, Sunday or Public Holiday, the time limit shall automatically be extended to the subsequent working day.

(C) Unless otherwise ordered by a Chamber or a Designated Judge, any response to a motion shall be filed within ten days. Any reply to the response shall be filed within five days.

Part II - COOPERATION FROM STATES AND JUDICIAL ASSISTANCE

Rule 8: Requests and Orders

(A) The Government of Sierra Leone shall cooperate with all organs of the Special Court at all stages of the proceedings. Requests by any organ of the Special Court shall be complied with in accordance with Article 17 of the Agreement. An order issued by a Chamber or by a Judge shall have the same force or effect as if issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court.

(B) Except in cases to which Rule 11, 13, 59 or 60 applies, where a Chamber or a Judge is satisfied that the Government of Sierra Leone has failed to comply with a request made in relation to any proceedings before that

Chamber or Judge, the Chamber or Judge may refer the matter to the President to take appropriate action.

(C) The Special Court may invite third States not party to the Agreement to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(D) Where a third State, which has entered into an ad hoc arrangement or an agreement with the Special Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the President may take appropriate action.

(E) Where it appears to the Prosecutor that a crime within the jurisdiction of the Special Court is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, he may request the State to forward to him all relevant information in that respect. The Government of Sierra Leone shall transmit to him such information forthwith in accordance with Article 17 of the Agreement.

Rule 9: Application for Deferral

Where it appears that crimes which are the subject of investigations or proceedings instituted in the courts of a State:

- (i) Are the subject of an investigation by the Prosecutor;
- (ii) Should be the subject of an investigation by the Prosecutor considering, amongst others:
 - (a) The seriousness of the offences;
 - (b) The status of the accused at the time of the alleged offences;
 - (c) The general importance of the legal questions involved in the case;
- (iii) Are the subject of an indictment in the Special Court,
- (iv) Fall within Rule 72(B),

The Prosecutor may apply for an order or request for deferral under Rule 10.

Rule 10: Order or Request for Deferral

(A) If it appears to the Trial Chamber seized of an application under Rule 9 that Sub-Rules (i), (ii) or (iii) of Rule 9 is satisfied, the Trial Chamber shall issue an order or request assistance to the effect that the court defer to the competence of the Special Court.

(B) An order or request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Registrar.

Rule 11: Non-compliance with an Order for Deferral

If, within 21 days after an order for deferral has been notified by the Registrar to the Government of Sierra Leone under whose jurisdiction the investigations or proceedings have been instituted, the Government of Sierra Leone fails to file a response which satisfies the Trial Chamber that it has taken or is taking adequate steps to comply with the order, the Trial Chamber may refer the matter to the President to take appropriate action.

Rule 12: Determinations of Courts of any State

Subject to Article 9 (2) of the Statute, determinations of courts of any State are not binding on the Special Court.

Rule 13: Double Jeopardy

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for acts for which that person has already been tried by the Special Court, he shall issue a reasoned order or request to such court seeking permanent discontinuance of its proceedings. If that court fails to do so, the President may take appropriate action.

Part III - ORGANIZATION OF THE SPECIAL COURT

Section 1: The Judges

Rule 14: Solemn Declaration

(A) Before taking up his duties each Judge shall make the following solemn declaration: "I solemnly declare that I will without fear or favour, affection or ill-will, serve as a Judge of the Special Court , honestly, faithfully, impartially and conscientiously."

(B) The text of the declaration, signed by the Judge and witnessed by the Secretary-General of the United Nations or his representative, and the President of Sierra Leone or his representative, shall be kept in the records of the Special Court.

(C) The members of the Special Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

Rule 15: Disqualification of Judges

(A) A Judge may not sit at a trial or appeal in any case in which he has a personal interest or concerning which he has or has had any personal association which might affect his impartiality. Where the Judge withdraws from the Trial Chamber, the President may assign the alternate judge, in accordance with Article 12(4) of the Statute, or another Trial Chamber Judge to sit in his place. Where a Judge withdraws from the Appeals Chamber, the Presiding Judge of that Chamber may assign another Judge to sit in his place.

(B) Any party may apply to the Chamber which the Judge is a member for his disqualification on the above grounds. If the Judge does not withdraw, the issue of disqualification will be determined by the other Judges of that Chamber.

(C) Whenever the absence of a Judge causes the membership of the Trial Chamber to fall below two Judges, the President may assign another Judge to sit in place of a missing Judge.

(D) The Judge who approves an indictment or who is involved with any pre-trial or interlocutory matter against a suspect or accused, shall not for that reason be disqualified from sitting as a member of a Chamber for the trial or appeal of that accused.

(E) Where it is alleged that a Judge is not fit to sit as member of the Special Court, the matter shall be referred from the Chamber to the Council of Judges, which will consider the matter and make a recommendation to the body which appointed the Judge, if required.

Rule 16: Absence and Resignation

(A) If a Judge is unable to continue sitting in a part-heard case for a short duration and the remaining Judges are satisfied that it is in the interests of

justice to do so, those remaining Judges may order that the hearing of the case continue in the absence of that Judge for a period of not more than five working days.

(B) If a Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is or is likely to be longer than five days, the President may designate an alternate Judge as provided in Article 12(4) of the Statute.

(i) If the case is in its advanced stages, and an alternate Judge was not available as provided in Article 12(4) of the Statute, and the remaining Judges are satisfied that it would not affect the verdict either way, the remaining Judges may continue in the absence of that Judge.

(ii) Where a trial or appeal chamber proceeds in the absence of one Judge, in the event that the decision is split evenly a new trial or appeal shall be ordered.

(C) A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations and the Government of Sierra Leone.

Rule 17: Precedence

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.

(B) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.

(C) In case of re-election, the total period of service as a Judge of the Special Court shall be taken into account.

Section 2: The Presidency

Rule 18: Election of the President

(A) The Presiding Judge of the Appeals Chamber shall be the President of the Special Court.

(B) The President shall be elected for a term of three years, or such shorter term as shall coincide with the duration of his term of office as a Judge. The President may be re-elected once.

(C) If the President ceases to be a member of the Special Court or resigns his office before the expiration of his term, the Judges of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.

(D) The President shall be elected by a majority of the votes of the Judges appointed to the Appeals Chamber.

Rule 19: Functions of the President

(A) The President shall preside at all plenary meetings of the Special Court, co-ordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Agreement, the Statute and the Rules.

(B) The President may after appropriate consultation issue Practice Directions, consistent with the Agreement, the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Special Court.

Rule 20: The Vice-Presidency

The Vice-Presidency shall rotate in order of precedence amongst the other members of the Appeals Chamber commencing on 7 March 2003.

Rule 21: Functions of the Vice-President

The Vice-President, whose term of office shall be four months and who shall be in residence in Sierra Leone during his term, shall exercise the functions of the President in case the latter is absent from Sierra Leone or is unable to act.

Rule 22: Replacements

If neither the President nor the Vice-President can carry out the functions of the Presidency, this shall be assumed by a senior Judge, determined in accordance with Rule 17.

Section 3: Internal Functioning of the Special Court

Rule 23: The Council of Judges

(A) There shall be a Council of Judges which shall be composed of the President, the Vice-President and the Presiding Judge of the Trial Chamber or Chambers.

(B) The President shall consult the Council of Judges on all major questions or matters relating to the functioning of the Special Court.

Rule 24: Plenary Meetings of the Special Court

The Judges shall meet in plenary to:

(i) Adopt and amend the Rules;

(ii) Adopt the Annual Report provided for in Article 25 of the Statute;

(iii) Decide upon matters relating to the internal functioning of the Chambers and the Special Court;

(iv) Exercise any other functions provided for in the Agreement, the Statute or in the Rules.

Rule 25: Dates of Plenary Meetings

Plenary Meetings shall be convened by the President if so requested by at least five Judges, and may be convened whenever the exercise of his functions under the Agreement, the Statute or the Rules so requires.

Rule 26: Quorum and Vote

(A) The quorum for each Plenary Meeting of the Special Court shall be five Judges, including at least one judge from the Trial Chamber.

(B) Subject to Rule 6 (A) and (B) and Rule 18 (C), the decisions of the Plenary Meeting of the Special Court shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge who acts in his place shall have a casting vote.